

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
Plaintiff,

v.

DAVID MICHAEL PITTS,  
Defendant.

No. CR-07-133-FVS

ORDER DENYING MOTION FOR  
RECONSIDERATION

**THIS MATTER** comes before the Court without oral argument based upon Amos R. Hunter's motion for reconsideration of an order denying his motion to intervene in the instant action.

**BACKGROUND**

On January 22, 2009, David Pitts and the government submitted a plea agreement pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C). The Court did not accept the plea agreement on January 22nd; instead, the Court reserved ruling on the acceptability of the plea agreement pending completion of a presentence investigation and report. Fed.R.Crim.P. 32. While the presentence investigation was underway, Amos Hunter filed a motion to intervene in the instant action. Mr. Hunter is an attorney. During 2007, he allegedly helped Mr. Pitts prepare and submit an insurance claim to an insurance company via FedEx. As a result of submitting the 2007 insurance claim via FedEx, Mr. Pitts is prepared to plead guilty to the crime of mail

1 fraud, 18 U.S.C. § 1341. The plea agreement refers to both Mr. Hunter  
2 and the 2007 insurance claim. Mr. Hunter challenges the plea  
3 agreement on at least two grounds. For one thing, he questions  
4 whether Mr. Pitts committed the crime of mail fraud by submitting the  
5 2007 insurance claim. For another thing, he complains that the plea  
6 agreement falsely implies that he helped Mr. Pitts commit a crime. As  
7 a result, Mr. Hunter moved to intervene in the instant action in order  
8 to seek correction of the plea agreement. The Court denied Mr.  
9 Hunter's motion. Now, he moves for reconsideration.

#### 10 **RULING**

11 Mr. Hunter alleges that he has been injured by certain statements  
12 in the plea agreement. He argues that he has a right to intervene in  
13 this action in order to seek redress for the alleged injury. As  
14 authority, he cites the Declaratory Judgment Act, 28 U.S.C. §§ 2201,  
15 2202. However, he has failed to cite, and independent research has  
16 failed to uncover, a single instance in which a federal court has  
17 permitted a third party to intervene in a criminal proceeding in order  
18 to challenge the accuracy of statements made in a plea agreement. The  
19 absence of authority is unsurprising. There is no indication Congress  
20 intended a Rule 11 proceeding to serve as a forum for resolution of  
21 the type of issue raised by Mr. Hunter. Indeed, the Ninth Circuit has  
22 consistently rebuffed the efforts of third persons to intervene in  
23 sentencing proceedings. *See, e.g., United States v. Gamma Tech*  
24 *Indus.*, 265 F.3d 917, 923 n.6 (9th Cir.2001) ("Victims have never had  
25 standing to appear as parties in criminal cases.") The best  
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1 indication of Congressional intent regarding the scope of a particular  
2 criminal proceeding is the Federal Rules of Criminal Procedure. When  
3 the defendant and the government enter into a Rule 11(c)(1)(C) plea  
4 agreement, the Court's task is to determine whether the terms of the  
5 agreement are acceptable. Fed.R.Crim.P. 11(c)(3)(A). "Rule 11 vests  
6 district courts with considerable discretion to assess the wisdom of  
7 plea bargains, to which attaches a concomitant responsibility to  
8 exercise that discretion reasonably." *In re Morgan*, 506 F.3d 705,  
9 708-09 (9th Cir.2007). In exercising its discretion, the Court may  
10 consider a broad array of information. See *Gamma Tech Indus.*, 265  
11 F.3d at 924 ("Congress has provided that '[n]o limitation shall be  
12 placed on the information concerning the . . . conduct of a person  
13 convicted of an offense which a court of the United States may receive  
14 and consider for the purpose of imposing an appropriate sentence.'"   
15 (quoting 18 U.S.C. § 3661)). An affected individual may present  
16 information for a district court's consideration. *Id.* He may do so  
17 even though he lacks standings to intervene as a party. *Id.* at 923  
18 and n.6. The Court is satisfied that, in light of the fact Mr. Hunter  
19 is named in the plea agreement, he is affected by Mr. Pitts's proposed  
20 plea of guilty. Thus, the Court will consider the information  
21 submitted by Mr. Hunter for the limited purpose of assessing the  
22 acceptability of the plea agreement under Rule 11. That will be the  
23 extent of Mr. Hunter's participation in the instant action. The Court  
24 will not allow him to intervene as a party or to speak at Mr. Pitts'  
25 sentencing hearing. Nor will the Court stay sentencing in order to  
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1 give Mr. Hunter time to file a civil action of his own.

2 **IT IS HEREBY ORDERED:**

3 Mr. Hunter's motion for reconsideration (**Ct. Rec. 160**) is denied.

4 **IT IS SO ORDERED.** The District Court Executive is hereby  
5 directed to enter this order and furnish copies to Mr. Hunter and to  
6 counsel for the parties.

7 **DATED** this 9th day of April, 2009.

8  
9 s/ Fred Van Sickle  
Fred Van Sickle  
10 Senior United States District Judge